

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONNESIA BROWN,

Plaintiff,

**ATTORNEY
DECLARATION**

-against-

9:17-CV-1036
(MAD/ATB)

THE STATE OF NEW YORK, THE NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY
SUPERVISION, NEW YORK STATE CORRECTIONS
OFFICER MATTHEW CORNELL, Individually and in his
Official capacity,

Defendants.

Aimee Cowan, pursuant to § 1746 of Title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

1. I am an Assistant Attorney General for the State of New York and appear in this action on behalf of Letitia James, Attorney General for the State of New York, attorney for Defendant, Matthew Cornell (“Defendant”) in this action.

2. I make this Declaration in support of Defendant’s motion pursuant to Federal Rule of Civil Procedure 56(a) for an order granting summary judgment and dismissing Plaintiff’s Complaint [Dkt. 1] in its entirety and with prejudice.

3. The alleged facts and legal arguments are set forth in more detail in the accompanying Statement of Material Facts Not in Dispute and Memorandum of Law.

4. On September 19, 2017, Plaintiff filed a civil rights Complaint pursuant to 42 U.S.C. §1983 alleging that Defendants violated Plaintiff’s rights under the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution and the laws of the State of New York

when Defendant Correction Officer Mathew Cornell allegedly planted a weapon on Plaintiff on January 21, 2016, while he was incarcerated at Auburn Correctional Facility. (Dkt. No. 1).

5. Defendants moved to dismiss Plaintiff's Complaint with respect to the state law claims pursuant to Federal Rule of Civil Procedure §12(b)(1) based on lack of subject matter jurisdiction. (Dkt. Nos. 11, 17).

6. The Court granted Defendants' motions to dismiss in part, dismissing the State of New York and the New York State Department of Corrections and Community Supervision as defendants. (Dkt. No. 21).

7. The Court also dismissed state law assault and battery claims and all official capacity claims against Defendant Cornell. (*Id.*).

8. The only remaining claims are the (1) First and Second Claim of false arrest/false imprisonment pursuant to state law and 42 U.S.C. §1983 against Officer Cornell and the (2) Third Claim of denial of right to fair trial pursuant to 42 U.S.C. §1983 against Officer Cornell.

9. Defendant Cornell respectfully requests that the Court grant his motion for summary judgment and dismiss the remaining claims against him, with prejudice.

10. Attached as **Exhibit “A”** is a true and accurate copy of Plaintiff's Responses to Defendant's First Set of Interrogatories.

11. Plaintiff was deposed on August 8, 2019. A true and accurate copy of Plaintiff's deposition transcript is attached as **Exhibit “B”**.¹

12. Defendant Cornell was deposed on November 21, 2019. A true and accurate copy of his deposition transcript is attached as **Exhibit “C”**.

13. Sgt. Steven Pyke was deposed on January 3, 2020. A true and accurate copy of

¹ Please note that due to court reporter error, the caption on this transcript has the incorrect Plaintiff but the deposition transcript does reflect the deposition of Plaintiff Donnesia Brown.

his deposition transcript is attached as **Exhibit “D”**.

14. The following exhibits are documents exchanged in discovery that are relevant to Plaintiff’s claims and Defendant’s defenses:

- a. A true and accurate copy of the Unusual Incident Packet with respect to the January 21, 2016 incident is attached as **Exhibit “E.”**
- b. A true and accurate copy of Plaintiff’s disciplinary history is attached as **Exhibit “F.”**
- c. Plaintiff pled guilty to promoting prison contraband in the first degree as a result of the January 21, 2016 incident. A true and accurate copy of the transcript from Plaintiff’s sentencing on October 11, 2016, before Cayuga County Court Judge Mark Fandrich, is attached as **Exhibit “G.”**
- d. A true and accurate copy of a letter dated December 23, 2016 from Cayuga County District Attorney Jon Budelmann to Cayuga County Court Judge Mark Fandrich is attached as **Exhibit “H.”**
- e. A true and accurate copy of an Order vacating the judgment of conviction entered against Plaintiff on October 11, 2016 is attached as **Exhibit “I.”**

f. A true and accurate copy of the Department of Corrections and Community Supervision’s Office of Special Investigations’ findings regarding allegations that Officer Cornell planted weapons on inmates is attached as **Exhibit “J.”**

15. Former Cayuga County Assistant District Attorney Brian Leeds was deposed on July 16, 2020. A true and accurate copy of the deposition transcript is attached as **Exhibit “K.”**

16. Based upon Defendant’s Statement of Material Facts Not in Dispute; Attorney Aimee Cowan’s Declaration, along with attached Exhibits “A-K;” the Declaration of Rachael Seguin, along with attached Exhibit “A,” the Declaration of Cheryl Parmiter, with attached Exhibit “A”; and

Defendant's Memorandum of Law; Defendant respectfully requests that this Court grant his motion for summary judgment and dismiss Plaintiff's Complaint in its entirety, with prejudice.

Pursuant to Section 1746 of Title 28 of the United States Code, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 31, 2020

LETITIA JAMES
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s/
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